

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

REED SAILOLA, *
Plaintiff, *
VS. * CASE NO.
1:13-cv-00544 HG-RLP
MUNICIPAL SERVICES BUREAU *
AND *
JOHN DOES (1-50), * JURY TRIAL REQUESTED
Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF

DESIGNATED WITNESS OF
MUNICIPAL SERVICES BUREAU
AARON MILLION

NOVEMBER 20, 2014

ORAL AND VIDEOTAPED DEPOSITION OF AARON

MILLION, produced as a witness at the instance of the
Plaintiff and duly sworn, was taken in the above styled
and numbered cause on the 20th day of November, 2014,
from 12:05 p.m. to 8:02 p.m., before GERRI C. RICHARD,
CSR in and for the State of Texas, reported by machine
shorthand, at the law offices of Smith, Robertson,
Elliott & Douglas, LLP, 221 West 6th Street, Suite 1100,
Austin, Texas, pursuant to the Federal Rules of Civil
Procedure.

1 Q. Okay. So 3.2.22 and 3.2.23 are the only
2 provisions that talk about that determination?

3 A. To the knowledge that's available to me, yes.

4 Q. All right. Now, the judiciary also states that
5 nonrestitution debts would be sent to the collector
6 electronically, doesn't it?

7 A. Is that --

8 Q. It's on Page 7.

9 A. Okay. Do you want to point me to that area
10 or --

11 Q. Yeah. 3.2.1.

12 A. Yes.

13 Q. Okay. And it requires the collector to have
14 the ability to obtain the transferred data
15 electronically?

16 A. Uh-huh.

17 Q. Is that how MSB received Mr. Sailola's data?

18 A. Yes.

19 Q. Now, was Mr. Sailola's data part of a batch of
20 data or was it only his one account?

21 A. It was part of a batch of data.

22 Q. Okay. And what data is included in that data
23 transfer?

24 A. I believe we -- I believe we produced a
25 redacted copy of the placement file. If I could review

1 Q. But in any event, you've got one phone number
2 in this transfer. Correct?

3 A. That -- let me just read it. It's not the
4 easiest thing to read. Yes, one phone number.

5 Q. Okay. Is this the only time that MSB has ever
6 collected against Mr. Sailola?

7 A. To my knowledge.

8 Q. Have you looked?

9 A. We looked at -- we looked for his name,
10 obviously, in our system and this was the record that
11 appeared.

12 Q. Okay. And you didn't find any other records.
13 Correct?

14 A. I did not find any records, no --

15 Q. And this --

16 A. -- any other records.

17 Q. -- specifically refers to the case number. It
18 is hard to read. 1DTA-11 --

19 A. Yeah.

20 Q. -- 03671?

21 A. Yes. That's correct.

22 Q. All right. The violation date there at the
23 bottom is 8-7-11?

24 A. Yes.

25 Q. And this only refers to that case number for

1 the purported offense that occurred that day of 8-7-11.

2 Correct?

3 A. That's correct.

4 Q. It doesn't involve any other citations or any
5 other issues that Mr. Sailola may have had?

6 A. Which information?

7 Q. Well, I mean, this -- this placement file.

8 A. Uh-huh.

9 Q. I mean, this is only to collect on that case.

10 Correct?

11 A. This information is used to collect on this
12 case.

13 Q. That's correct.

14 A. Yes.

15 Q. Not other cases?

16 A. I don't know if Hawaii uses this information to
17 collect on other cases or not, but we use this
18 information to collect on this case.

19 Q. Okay.

20 A. Yes.

21 Q. And you don't use this information to collect
22 on any other case against Mr. Sailola?

23 A. We don't have any other case for Mr. Sailola.

24 Q. That's what I'm getting at. So you -- the only
25 case that you're aware of that you have ever collected

1 against Mr. Sailola is the 1DTA-11-03671 case?

2 A. That I'm aware of, yes.

3 Q. Okay. All right. Now, I wanted to ask you,
4 this document is prepared and stored in the normal
5 course of your business and relates to your collection
6 activities. Correct?

7 A. Yes, sir.

8 MR. HOLCOMB: All right. We would move to
9 enter this as Exhibit 4.

10 Q. Now, as promised, I'd like to go back to the
11 request for proposal --

12 A. Okay.

13 Q. -- which is Exhibit 2.

14 A. Okay.

15 Q. All right. Now, on Page 8 -- oh, when did you
16 turn that data -- Exhibit 4, I'm sorry, that data
17 transfer, when did you turn that over to your attorneys?

18 A. I do not recall.

19 Q. All right. Was it before two days ago?

20 A. We produced -- of course, in this particular
21 case, as you're aware, we've had different counsel, and
22 this has been going on since 2013, so specific
23 documents, I would need some assistance from my counsel
24 to tell me when they received it. I don't recall.

25 Q. Okay. So did you turn this over to David

1 action.

2 Q. Did you take any -- did you rely on the court?

3 Did MSB rely on the court?

4 A. Do we rely on the court for what?

5 Q. In determining that the account was
6 collectible?

7 A. Absolutely.

8 Q. Did you take any additional steps to determine
9 that the account was collectible?

10 A. We took all steps that we're required to under
11 contract.

12 Q. All right. You waited for Mr. Sailola to call
13 you back?

14 A. For what?

15 Q. For anything.

16 A. He stated he was going to call us back.

17 Q. Uh-huh.

18 A. I don't know.

19 Q. Did he?

20 A. No, not him or his attorney.

21 Q. Okay. You continued to call while he was --
22 while you were waiting for him to call back?

23 A. I'm sorry. What?

24 Q. Did you stop calling him?

25 MR. RIGBY: Objection --

1 A. We did stop calling him when the lawsuit was
2 filed.

3 Q. Okay. Did you stop calling him when he said he
4 would call you back?

5 A. No.

6 Q. All right. I want to talk to you now more
7 about Exhibit 2. I want to turn your attention --

8 A. Is that the same exhibit we're on?

9 Q. Yes, sir. I want to turn your attention to
10 Section Four - Proposal Format and Content, on Page 17.

11 A. When -- when it's a good time, I would like to
12 take a break to go to the restroom, when -- when it's
13 convenient.

14 Q. Well, we're kind of at a --

15 A. Whatever -- whatever is comfortable for you.

16 Q. We're starting a new section, so we can do that
17 now --

18 A. Okay.

19 Q. -- if it would make you more comfortable.

20 A. All right.

21 THE VIDEOGRAPHER: Off the record. 1:53.

22 (Brief Recess)

23 THE VIDEOGRAPHER: This is the beginning
24 of Tape 3. Back on the record. 2:01.

25 Q. We're back on the record, Mr. Million. You're

1 A. Not other than processing the placement file,
2 the referral file that was sent by the judiciary.

3 Q. Okay. You are familiar with eKokua?

4 A. A court -- the court website?

5 Q. Yes, sir.

6 A. Yes. Somewhat familiar. I've used it before.

7 Q. Well, in fact, in discovery you had -- or MSB
8 had disclosed a printout from --

9 A. Uh-huh.

10 Q. -- a calendar view of eKokua.

11 A. Oh. Yes, we did.

12 MR. HOLCOMB: This will be, I guess,
13 Exhibit 8.

14 THE REPORTER: Yes.

15 Q. How did you obtain this document?

16 A. From the court's website. I believe you
17 referred to it as eKokua.

18 Q. Uh-huh.

19 A. Yes.

20 Q. Who obtained this from eKokua?

21 A. I don't know if it was -- I don't know. I
22 don't remember who pulled this or if it was me. It
23 could have been me. I don't recall.

24 Q. Okay. How would you go about pulling this?

25 A. You would go to the -- the URL for their

1 websites and you would enter in the -- the case ID, I
2 believe, or the citation number, whatever information
3 you have available, and then it would retrieve the
4 record.

5 Q. Okay. Do you have to have any special
6 permission from the Hawaii State Judiciary to do this or
7 can anybody do it?

8 A. You have to be in compliance with whatever
9 terms and conditions are on their site.

10 Q. Okay. So you have to check a box that says, I
11 will comply with these terms and conditions?

12 A. I don't know if it's checking a box, but
13 there's some method of them presenting an acceptable use
14 or a terms and conditions, something --

15 Q. Okay.

16 A. -- to that effect.

17 Q. And once a person says, yes, I will accept
18 these conditions, then they're allowed full access to
19 this. Correct?

20 A. I don't know if they're allowed full access to
21 everything or -- I mean, they have full access to what
22 we were able to retrieve here.

23 Q. Okay. All right. Now, I wanted to take a look
24 here at the -- Page 42 is what it's Bates-stamped.

25 A. Uh-huh.

1 Q. There's a January 7th entry. Do you see that?

2 A. I do.

3 Q. What does that say?

4 A. Order & Notice of Entry of Order.

5 Q. No, sir. Above it.

6 A. Hearing Held. LO, forward slash, I believe
7 that is --

8 Q. You don't -- you don't have to read the names.
9 Just start "defendant not present."

10 A. Defendant not present. Jonathan
11 Burge-defending present. Defense submitted request for
12 appeal, case pending perfection of appeal. Bail
13 continued.

14 Q. Okay. Was January 7th before this account was
15 placed with MSB?

16 A. Let's see. According to these records, the
17 account was sent to collection agency on July 1st, 2013,
18 and so July 7th, 2013, is indeed before July 1st, 2013.

19 Q. Okay. And I want to direct your attention to
20 the entry dated June 6, 2013, on the same page, towards
21 the bottom. Do you see that?

22 A. Sure. Yeah, and these are all entries that the
23 court entered, right, that we're looking at? Yes.

24 Okay.

25 Q. That's correct.

1 A. Yes.

2 Q. And, again, if you'll start reading where it
3 says "defendant not present."

4 A. Defendant not present. Bench warrant ordered.
5 Later, bench warrant recalled. Notice of appeal filed
6 5-28-13. Sentence stayed. Bail continued.

7 Q. Okay. And June 6th was, in fact, before this
8 account was placed with MSB. Is that correct?

9 A. Uh-huh. Yes. Yes. Sorry. Yes.

10 Q. All right.

11 MR. HOLCOMB: I would like to enter that
12 as Exhibit 8.

13 Also, just for clarification, I want to
14 make sure that that contract was entered as Exhibit 7.
15 I don't recall having asked for that specifically.

16 A. Oh, I have two of these. Why do I have two of
17 these?

18 MR. RIGBY: Just look at the one that has
19 the sticker on it.

20 THE WITNESS: Okay.

21 Q. Oh, I just gave you an extra copy.

22 A. Oh, I see. Okay.

23 Q. All right. We're -- we're done looking at
24 that.

25 A. Oh, okay.

1 A. Yeah.

2 Q. I want to turn to Exhibit B.

3 A. Which is?

4 Q. It's not numbered, but it's after the last page
5 of her questions, which --

6 A. The pages are numbered. Oh. Oh, you said it's
7 not numbered.

8 Q. Yeah, it's not numbered.

9 A. Okay. What is -- well, I don't know what I'm
10 looking at. I just --

11 Q. Okay.

12 A. Yeah.

13 Q. Exhibit B. It should be right after Page 4,
14 Mr. Million. Here. Sorry. Let me show you.

15 A. Is this entered into the -- because, I mean, if
16 it isn't here --

17 Q. It should be.

18 A. If it isn't in my copy -- is it -- is it this
19 one here?

20 Q. Yes. That's it.

21 A. What's the exhibit on the bottom? B?

22 Q. Exhibit B. Yeah.

23 A. Okay. Perfect. Okay.

24 Q. Okay. Is that the subpoena that MSB caused to
25 be served on the Hawaii State Judiciary?

1 A. I just need to review it. Mr. Minkin's
2 signature appears, so I think so. Yes.

3 Q. Okay.

4 MR. HOLCOMB: We would like to introduce
5 this into evidence as Exhibit 9.

6 Q. All right. Now, let's look at the subpoena.
7 Do you see where the box is checked about halfway
8 through the page?

9 A. Just to clarify -- oh, I'm sorry. This is -- I
10 thought you were entering something else within here as
11 an exhibit.

12 Q. Oh, no.

13 A. Okay.

14 Q. Do you see where -- about halfway through the
15 page there's an X in the box that starts "you are
16 commanded"?

17 A. Yes.

18 Q. Can you please read what that says, please?

19 A. You are commanded to produce and permit
20 inspection and copying of the following documents or
21 objects described in Exhibit "1", attached hereto, at
22 the place, date, and time specified below. It lists an
23 office for a court reporter and a date and time of
24 September 29, 2014, at 9:00 a.m.

25 Q. Okay. And can you turn -- it should be a

1 couple of pages -- to Exhibit "1"?

2 A. Yes.

3 Q. All right. Now, will you -- well, what does
4 that page say?

5 A. Documents to be Produced by Custodian of
6 Records, Hawaii State Judiciary, Office of the
7 Administrative Director of the Courts.

8 Please read this subpoena very carefully.
9 If you fail to bring with you documents called by this
10 subpoena that are in your possession, you may need to
11 return for a second deposition.

12 No. 1, Any and all documents, including
13 but not limited to filings, forms, letters, e-mails, and
14 contact sheets relating to contact information and/or
15 the collection of monies owed to the Hawaii State
16 Judiciary by the individual Reed Wade Sailola, whose
17 Party ID on the eCourt eKokua Judiciary Information
18 Management System is @18742 ("Sailola").

19 No. 2, Any and all documents, including
20 but not limited to filings, forms, letters, e-mails, and
21 contact sheets relating to the collection of monies owed
22 to the Hawaii State Judiciary by Sailola which contain
23 Sailola's contact information, including telephone
24 number, and which is the source of contact information
25 that was forwarded to Municipal Services Bureau with the

1 1D-V-135, with a revision date.

2 Q. Uh-huh. But are they specific to Mr. Sailola?

3 A. Oh, I -- I don't have that information. I
4 don't know.

5 Q. Okay. Well, let's take a look. Let's start
6 with the citation that has been attached that is
7 numbered 1DTI-12-021451. Do you see that citation?

8 A. I do.

9 Q. Whose name is on that?

10 A. Last name, Sailola; first name, Reed; middle
11 initial, W.

12 Q. Do you see the right side, the right column, if
13 you will, where it starts -- the heading is Details
14 Regarding the Infraction(s) Charged.

15 A. I do.

16 Q. All right. And what is the date, month, and
17 year listed there?

18 A. March 9th, 2012. 9:15 a.m.

19 Q. Okay. And was MSB attempting to collect any
20 debt related to this citation?

21 A. When?

22 Q. Pertinent to this lawsuit.

23 A. Not for this citation, no.

24 Q. Okay. Ever?

25 A. Not to my knowledge.

1 Q. All right. And then if you'll flip a couple
2 more pages over, Mr. Million, there is a second
3 citation, and it is numbered 1DTI-10-078113. Do you see
4 that?

5 A. I do.

6 Q. Okay. Whose name is listed as the defendant
7 there?

8 A. Last name, Sailola; first name, Reed; middle
9 initial, W.

10 Q. Okay. And what date was that citation? Again,
11 you'll look to the right -- right-hand column.

12 A. June 2nd, 2010, at 12:04 p.m.

13 Q. Okay. Was MSB collecting any -- or was MSB's
14 collection efforts related to this citation?

15 A. No.

16 Q. Okay. Has MSB ever attempted to collect any
17 money from this citation?

18 A. Not to my knowledge.

19 Q. Okay. Two more pages, Mr. Million. And we
20 have a citation numbered 1DTI-08-074883. Do you see
21 that citation?

22 A. Yes.

23 Q. Who is the defendant listed there on that
24 citation?

25 A. Last name, Sailola; first name, Reed; middle

1 initial, W.

2 Q. Okay. And what's the date of that infraction?

3 A. May 27th, 2008. 11:34 a.m.

4 Q. Okay. Was MSB attempting to collect any monies
5 resulting from that citation?

6 A. Not to my knowledge.

7 Q. Has MSB ever attempted to collect any money
8 related to this citation?

9 A. Not to my knowledge.

10 Q. Okay. And then two pages over, we have a Bail
11 Bond Receipt, Acknowledgment, and Notice to Appear. Do
12 you see that?

13 A. I do.

14 Q. Okay. And what is the case number listed there
15 on the far right, 1DTA?

16 A. Case number is 1DTA-11-03671.

17 Q. Okay. And is that the case that MSB was
18 attempting to collect?

19 A. Yes, it appears to be.

20 Q. Okay. And the date of the arrest listed is
21 8-8-11?

22 MR. RIGBY: I'm sorry.

23 Q. Or at least the date -- I'm sorry. The date on
24 this document says 8-8-11. Do you see that?

25 A. The date of the document is 8-8-11.

1 Q. Okay. What phone number is listed on this
2 document?

3 A. There's a phone number 737-7563.

4 Q. Okay. Did MSB call that phone number?

5 A. I don't know. I would need to review records
6 that show what phone number we called, which should have
7 been produced to you.

8 Q. Okay. Are there any other phone numbers on
9 this document other than the 737 number?

10 A. I do not see any other on this page.

11 Q. Did Mr. Sailola provide any other numbers on
12 8-7 or 8-8-11?

13 A. Oh, I don't know.

14 Q. Okay. Did MSB have Mr. Sailola's consent to
15 call as of 8-8-11?

16 MR. RIGBY: Objection. Calls for a legal
17 conclusion.

18 A. Well, again, we would need to know what
19 consents, what call, and what number you're asking.

20 Q. Okay. Did they have -- did MSB have any
21 consent to call any number other than the 737 number
22 related to this specific account or case?

23 MR. RIGBY: Objection to the extent it
24 calls for a legal conclusion.

25 A. On what day?

1 speculation; legal conclusion.

2 A. We would need to ask the judiciary.

3 Q. Okay. So you don't have any information
4 regarding how they obtained that phone number that they
5 sent to you?

6 A. Again, we would need to ask the judiciary.

7 Q. Does MSB have any information as to how the
8 Hawaii State Judiciary obtained the 864 number that MSB
9 called to collect this debt?

10 A. I assume in the normal course of their
11 day-to-day operations.

12 Q. Okay. You assume that. Do you have any
13 evidence to support your assumption?

14 MR. RIGBY: Objection. Calls for a legal
15 conclusion.

16 A. The contract that states that we can rely on
17 the information provided to us by the judiciary.

18 Q. Okay. That amounts to consent --

19 MR. RIGBY: Objection. Calls for a legal
20 conclusion.

21 Q. -- your contract with the judiciary?

22 MR. RIGBY: Same objection.

23 Q. Is that your testimony?

24 MR. RIGBY: Same objection.

25 A. Is what my testimony?

1 MR. RIGBY: Objection. Asked and
2 answered.

3 A. No.

4 Q. Does MSB have any information as to why?

5 MR. RIGBY: Objection. Calls for
6 speculation.

7 A. Not that I'm aware of.

8 Q. All right. Now, the last page that I want to
9 discuss with you there is the Notice of Entry of
10 Judgment and/or --

11 A. And, of course, Mr. Sailola confirmed his
12 consent when we spoke with him.

13 Q. Well, we'll get into that in a minute.

14 A. Okay.

15 Q. That was after you had already started calling.
16 Correct?

17 A. We had consent when we started calling, but
18 then he confirmed it when we spoke with him.

19 Q. All right. Well, we'll talk about that in a
20 minute, Mr. Million. But --

21 A. Sure.

22 Q. Look at the last page there that they produced.
23 Have you got that, the judgment? Notice of Entry of
24 Judgment.

25 A. Yes.

1 Q. Okay. Now, is that the case that you were
2 collecting?

3 A. I'll need to review it. It appears to be the
4 same case number.

5 Q. Okay. Now, look at the bottom left corner
6 where it says -- it's got a big circle and it says
7 "apply." Do you see that?

8 A. Yes, I do. Uh-huh.

9 Q. All right. And it says \$1,000, Bail Bond
10 Posted. Do you see that?

11 A. Uh-huh.

12 Q. Okay. Oh, yeah. Could you not -- not say
13 uh-huh?

14 A. I apologize. Yes, I do see it.

15 Q. Okay. All right. Now, are there any phone
16 numbers on this document?

17 A. I'll -- I'll review it here. I don't see it,
18 no.

19 Q. Okay.

20 A. I don't see any other phone number.

21 Q. All right. What date is this -- or what is the
22 date of this document?

23 A. The date of the document is December 6, 2012.

24 Q. Okay. Now, where it says -- where I showed you
25 at the circle, what does "apply" mean there?

1 MR. RIGBY: Objection. Calls for a legal
2 conclusion.

3 A. I don't know. I don't know whose notes those
4 are or what that -- I don't know what -- in what context
5 that refers.

6 Q. Well, you've found out since, haven't you? MSB
7 has found out since?

8 A. Perhaps you can refresh my memory.

9 Q. Well, didn't Megan Allen receive information
10 from the Hawaii judiciary that says the bond should have
11 been applied?

12 A. Yeah, I don't recall if that communication said
13 that \$1,000 bail would be applied, but --

14 Q. Okay. When is the first time MSB saw this
15 judgment form?

16 A. I believe with the subpoena.

17 Q. Okay. There was no investigation done to
18 obtain this judgment form by MSB other than this
19 subpoena?

20 A. Sure. That investigation was -- that was the
21 first opportunity to conduct an investigation, and so
22 this is the product of that investigation.

23 Q. Was this bail bond related to Hawaii law?

24 MR. RIGBY: Objection. Calls for
25 speculation; legal conclusion.

1 Q. Well, I'm just asking you. Does it?

2 A. I would need to review it again.

3 Q. All right. Well, take a look.

4 A. What's the exhibit number?

5 MR. RIGBY: 4.

6 Q. 4.

7 A. No, this sheet does not include the -- the fee
8 that's outlined in the fee schedule.

9 Q. Okay.

10 MR. HOLCOMB: I would like to,
11 incidentally, enter as Exhibit 10 that consumer fact
12 sheet that we just went over.

13 Q. All right. Now, looking at this consumer fact
14 sheet, my question was, is \$1,000 more than the amount
15 of money that MSB sought to collect from Mr. Sailola?

16 A. Yes, it is.

17 Q. So why were you collecting from Mr. Sailola?

18 A. Because the account was referred by our client.

19 Q. Okay.

20 A. And, of course, we don't know if the highest
21 balance that he's ever had was the amount that was
22 referred. He could have made payments before it was
23 referred to collection.

24 Q. So he could have made payments on whatever
25 amount that he --

1 A. Whatever amount he owed.

2 Q. Okay. Well, let me show you again the last
3 page of the written interrogatory subpoena duces tecum.
4 I believe that was Exhibit 9.

5 A. Oh, I had it here. Yes. Okay.

6 Q. Do you see this judgment form, the last page
7 there?

8 A. I do.

9 Q. And what amounts are listed there?

10 A. Well, are all of these amounts intended to be
11 added or is there anything subtracted? I don't know
12 what all these fields are for.

13 Q. Well, if you add them all up, is it less than
14 \$1,000?

15 A. Let's see. It appears to be, yes. Uh-huh.

16 Q. So why were you collecting from Mr. Sailola?

17 MR. RIGBY: Objection. Asked and
18 answered.

19 A. Well, I don't know if this is the only sheet
20 that's used to calculate the total amount of fees that
21 is ultimately due from a defendant who's -- who has a
22 fine that they owe.

23 Q. So the Hawaii State Judiciary was not
24 responsive to your subpoena duces tecum? Is that your
25 testimony?

1 A. Oh, no. I didn't say that.

2 Q. Okay. So you would agree that the Hawaii State
3 Judiciary has produced all of the documents that are
4 responsive to the subpoena duces tecum?

5 A. I am sure that they complied with --

6 Q. Okay.

7 A. -- the subpoena.

8 Q. And if there are no other documents produced,
9 then is it safe to say that those documents don't exist?

10 A. Well, I don't know if that's a safe assumption.
11 I don't know if these are calculated on something that
12 isn't in a document or I don't know why the placement
13 file that we received at MSB wasn't produced. I don't
14 know. I don't have the answer to that question.

15 Q. Did a debt exist on December 6, 2012?

16 A. I'm sorry? Did a --

17 Q. Did the debt exist on December 6, 2012?

18 MR. RIGBY: Objection. Calls for a legal
19 conclusion.

20 A. Well, it wasn't referred for collection as of
21 that date, so I don't know in what context it exists or
22 doesn't prior to it coming to MSB.

23 Q. Did MSB have consent to call Mr. Sailola using
24 an automated telephone dialing system --

25 MR. RIGBY: Objection.

1 864 -- that begins with 864 that MSB called is not on
2 either of those documents, is it?

3 A. Either of which documents?

4 Q. The two documents that were produced to you
5 related to 1DTA-11-03671, which would be the bail bond
6 receipt and the judgment form.

7 A. I would agree, but the number certainly is
8 included in other documents provided by the judiciary.

9 Q. What documents?

10 A. Other documents in Exhibit 9.

11 Q. Okay. Are those transactions -- are those
12 documents in Exhibit 9 related to the account for which
13 you were going to -- or for which MSB was collecting
14 against Mr. Sailola?

15 A. I'm not sure how the court evaluates their
16 relationship.

17 Q. Okay. How do you evaluate?

18 A. I don't.

19 Q. All right. Do you know what consent is?

20 A. I do.

21 Q. What is it?

22 MR. RIGBY: Calls for a legal conclusion.

23 A. In a simple term, permission.

24 Q. Okay. How might that permission be --

25 A. Although I'm not in any way suggesting that we

1 Q. Okay.

2 A. Yeah.

3 Q. I want to ask you about this Notice of Entry of
4 Judgment in particular. Could MSB have obtained that
5 before this subpoena duces tecum was issued?

6 A. It had no purpose to, but, yes, it could have.

7 Q. Should it have obtained it before?

8 MR. RIGBY: Calls for speculation.

9 A. No, not in my opinion.

10 Q. Was it reckless not to obtain it before issuing
11 the subpoena duces tecum?

12 MR. RIGBY: Objection. Calls for a legal
13 conclusion.

14 A. No.

15 Q. Why?

16 MR. RIGBY: Same objection.

17 A. Well, as soon as we knew that there was a
18 dispute, which was the lawsuit, the account was
19 immediately placed on hold, so there was no additional
20 collection activity that could have occurred or that did
21 actually occur and we went through the normal legal
22 lawsuit process. Perhaps it could have even happened
23 quicker had Mr. Sailola ever contacted us or his
24 attorney to just ask us to investigate it.

25 Q. After the phone call with Michael Dorn --

1 Q. What is this, Mr. Million?

2 A. This is an e-mail, a printed e-mail.

3 Q. Okay. From whom?

4 A. From A. Lee Rigby to Judy Tanaka, Glenn
5 Melchinger, and Aaron Million --

6 Q. Okay.

7 A. -- copying somebody by the name of K. Guadagno
8 and Heather Newby.

9 Q. All right. And what e-mail -- is there another
10 e-mail shown on this document?

11 A. Yes.

12 Q. Okay. From whom and to whom?

13 A. From Megan Allen to Aaron Million and A. Lee
14 Rigby.

15 Q. Okay. What's the date that e-mail was sent?

16 A. November 18, 2014.

17 Q. Okay. Are there -- is there yet another e-mail
18 below that one that is evidenced on this document?

19 A. Uh-huh.

20 Q. What -- who is that from and to -- or who is
21 that e-mail between and what's the date on that?

22 A. Jeanne Taketa to Megan Allen.

23 Q. Okay. What's that date?

24 A. September 2.

25 Q. 2000 --

1 A. '14.

2 Q. Okay. And what does that e-mail state?

3 A. Hi, Megan! There is a mistake on this case.
4 Again, this is the e-mail from the -- from the Hawaii
5 judiciary. Hi, Megan! This is a -- there is a mistake
6 on this case. The bail that was posted should have
7 covered the fines and fees on this case. This means
8 that the case should not be at collections. I expect
9 that staff will remedy this situation by cancelling this
10 case from collections shortly. Thanks. jmt.

11 Q. Who is Megan Allen?

12 A. Megan Allen is our director of client services.

13 Q. Okay. Now, it also shows on this document that
14 Ms. Taketa was responding to an e-mail from Megan Allen.
15 Is that true? Or Megan Allen. Is that true?

16 A. Yes. Yes. Yes.

17 Q. All right. When did Ms. Allen send the e-mail
18 to Ms. Taketa?

19 A. September 2nd at 6:33 a.m.

20 Q. Okay. And what did she send to Ms. Taketa? I
21 mean, what was the text of her e-mail? I'm sorry.

22 A. She said, Hi, Jeanne. I believe that's how the
23 name is pronounced. Sorry we missed each other last
24 Friday! I hope you had a wonderful Labor Day weekend.
25 Smiley face. I will give you a call later today and

1 hopefully we can connect and discuss some additional
2 information we need on a debtor placed with us. And
3 there's case number 1DTA-11-03671; placed 7-2-2013;
4 phone number 808-864-4957. Can you confirm how you
5 received the phone number (debtor citation, etc.)? Are
6 you also able to provide a copy of the actual citation?
7 Thanks for your help! Hopefully we can connect later
8 today and I can give you more details on why this is
9 needed. Regards, Megan Allen.

10 Q. Okay. She says she will give Ms. Taketa a call
11 later that day. Do you know if that phone call ever
12 occurred?

13 A. Oh, I don't know.

14 Q. Do you know any further discussions that MSB
15 has had with the Hawaii State Judiciary regarding this
16 account?

17 A. I'm not aware of any.

18 Q. All right. Do you know whether the Hawaii
19 State Judiciary confirmed how they received the phone
20 number?

21 A. I do not know.

22 Q. Do you know whether they were able to produce a
23 copy of any actual citation related to this account
24 other than what was produced in response to the subpoena
25 duces tecum?

1 conclusion.

2 Q. Did MSB willfully wait until September 2nd,
3 2014, to inquire with the Hawaii State Judiciary?

4 MR. RIGBY: Objection. Calls for a legal
5 conclusion.

6 A. I can't speak to the willfulness of any
7 particular individual.

8 Q. Did the debt exist, according to Ms. Taketa?

9 MR. RIGBY: Objection. Calls for
10 speculation.

11 A. Did the debt exist?

12 Q. Uh-huh.

13 A. Well, I think it's clear the debt existed.
14 Yeah.

15 Q. Why?

16 A. Because she indicates that bail was used to
17 cover the debt, the filing fees.

18 Q. Okay.

19 A. So it did exist.

20 Q. She said that the bail that was posted should
21 have covered the fines and fees on this case?

22 A. Uh-huh.

23 Q. And you believe that to be true?

24 MR. RIGBY: Objection. Calls for
25 speculation.

1 A. I have no -- I have no reason to question the
2 court.

3 Q. And the information that we have is that the
4 court had the bail in its possession?

5 A. Based on this communication.

6 Q. Ms. Allen also says in this e-mail that she was
7 going to tell Ms. Taketa why this information was
8 needed.

9 A. Uh-huh. Yeah, I can see that down there.

10 Q. Did she ever tell anyone at the Hawaii State
11 Judiciary why details on this account were needed?

12 A. I don't know.

13 Q. Did anyone from MSB ever tell Hawaii State
14 Judiciary why more details on this account was needed?

15 A. I -- no, I don't know. I can't speak to that.

16 Q. All right.

17 MR. HOLCOMB: And we are going to lodge a
18 formal objection pursuant to Rules 26, 34, and 30 that
19 we weren't informed of Ms. Allen's participation in this
20 case prior to November 18th, 2014, and we demand that
21 she be produced to be questioned as well.

22 I'd like to enter that e-mail as the
23 exhibit next in order, please.

24 All right. Now, I have some copies here
25 of some certified Notice of Entries of Judgment. And I

1 A. I don't recall seeing these.

2 Q. Okay.

3 A. But like I said, they -- they look very similar
4 to this one here.

5 Q. Does -- do these documents pertain to the case
6 that you were collecting, based on the case number?

7 MR. RIGBY: Objection. Calls for
8 speculation.

9 A. Case number is the same.

10 Q. Okay. Now, the first one -- I think the first
11 one that I stapled there is dated January 7th, 2013?

12 A. Yes.

13 Q. See that? And what does it say in the
14 Conditions box or Conditions portion of this form?

15 A. Could you --

16 Q. The handwritten --

17 A. -- please point me to the area.

18 Q. The handwritten portion.

19 A. Conditions. Sentence, perfection of appeal
20 (transcript requested and exhibits needed for appeal).

21 Q. Okay. And who is the attorney listed down at
22 the bottom?

23 A. Jonathan Burge.

24 Q. Okay. And immediately above that, do you see
25 where it says bail bond posted, 1,000?

1 MR. RIGBY: Just above the attorney's
2 name.

3 Q. Immediately above Mr. Burge's name.

4 A. Yes.

5 Q. Okay. And what does that say? It's circled
6 and what does that word say?

7 A. \$1,000 continued.

8 Q. Okay. Now, if you'll turn to the next one,
9 Mr. Million.

10 A. Uh-huh.

11 Q. Does this have the same case number?

12 A. Yes.

13 Q. Okay. What's the date of this, this form?

14 A. Thursday, June 6, 2013.

15 Q. Okay. Now, in the Conditions portion of that,
16 what does it say?

17 A. I'm not sure what that first letter is. Is
18 that a D? DAF? I don't know.

19 Q. Okay.

20 A. File not provided by -- I don't know what
21 that's -- pros.

22 Q. Okay.

23 A. Sentence stayed pending appeal (notice filed
24 5-28-13). And something that's not legible to me
25 beneath it.

1 Q. Okay. And you'll see down where the bail bond
2 is posted. Do you see that in the same place, \$1,000
3 that's circled?

4 A. Yes.

5 Q. And what does that say?

6 A. I'll spell it. I don't think it's a word.

7 Q. Okay.

8 A. C-o-n-t.

9 Q. All right. Okay. Was Mr. Sailola's request to
10 have his sentence stayed on January 7th, 2013, express
11 consent to receive collection calls?

12 MR. RIGBY: Objection. Calls for a legal
13 conclusion.

14 A. I need you to ask that question a little
15 slower. I didn't catch all that.

16 Q. Was Mr. Sailola's request to have his sentence
17 stayed on January 7th, 2013, express consent to receive
18 collection calls?

19 MR. RIGBY: Same objection.

20 A. I think those two items are not related in any
21 way.

22 Q. Might that request indicate that Mr. Sailola
23 did not consent to receive collection calls pertaining
24 to this case?

25 MR. RIGBY: Calls for a legal conclusion.

1 calls.

2 Q. Okay. Is all -- are all the calls that were
3 placed by MSB to Mr. Sailola on this document?

4 A. I may -- I may need to correct that statement
5 now that I'm reviewing this here. The -- the telephone
6 residence are probably still going to be calls used
7 through -- or made through the i3 telephone software.
8 They just happen to be the instances where like the
9 agent left a message on the machine. So I want to
10 clarify that.

11 Q. Thank you for clarifying.

12 A. Yeah. Absolutely.

13 Q. Are all the calls that were placed by MSB to
14 Mr. Sailola on this document?

15 A. Yes.

16 Q. Now, many of these on the user name field, they
17 say "dialer," while several of them say someone's name.
18 Why is that?

19 A. Yeah. So the -- the instances where you see
20 the individual's name, what that's telling you is that
21 they physically typed in the notes that you see on
22 this --

23 Q. Okay.

24 A. -- on this report, and you'll see that those
25 correspond with the recorded messages. In the case of

1 Q. All right. So for the calls where a person's
2 name appears, were the numbers dialed any differently
3 than the calls that just say "dialer"?

4 A. No, not necessarily.

5 Q. Who is CS Systems?

6 A. I would need you to point me to where you see
7 that.

8 Q. I'm sorry. CR -- CR --

9 A. CR Software?

10 Q. -- Software.

11 A. CR Software is the manufacturer of the
12 collection system.

13 Q. Okay.

14 A. Just a note for you, CR Software was acquired
15 by FICO --

16 Q. Uh-huh.

17 A. -- so it's now FICO.

18 Q. All right. So what is CR Software's role in
19 all this?

20 A. They manufactured the software that we use.

21 Q. All right. Well, let's talk about your dialing
22 system. How does it work?

23 MR. HOLCOMB: Oh, I hope that I moved to
24 have this admitted. If I did not, I'm doing so now, the
25 Consumer Fact Sheet, Exhibit 10.

1 Q. How does your dialing system work?

2 MR. RIGBY: Objection. Calls for a
3 narrative; vague and ambiguous.

4 A. We would need to drill down a little more
5 specific than that. There's, as you know, about 900
6 pages of what -- how it does things.

7 Q. Okay. Does a human dial the phone number?

8 A. Yes, it can.

9 Q. In any of those calls on Exhibit 10, did a
10 human dial the phone number?

11 A. A human told the dialer which number to call.

12 Q. Okay. Are you claiming that your system is not
13 an automatic telephone dialing system because it does
14 not store numbers?

15 MR. RIGBY: Objection. Calls for a legal
16 conclusion.

17 A. I'm not a lawyer, so I can't make that
18 statement, but I can tell you that we know that our
19 dialer does not meet the full and complete definition of
20 an ATDS as indicated under the TCPA.

21 Q. Is it a predictive dialer?

22 MR. RIGBY: Objection. Calls for a legal
23 conclusion.

24 A. There are predictive capabilities.

25 Q. It has the capacity to store numbers?

1 MR. RIGBY: Objection. Calls for a legal
2 conclusion.

3 A. Not numbers which have been randomly
4 generated --

5 Q. All right.

6 A. -- or produced.

7 Q. But it has the capacity to store numbers that
8 are transferred into your system?

9 A. It has the capacity to call the numbers that we
10 tell it to call.

11 Q. Okay. MSB loads those numbers into the dialer?

12 A. A person prepares a list of numbers to be
13 called.

14 Q. Okay. What person?

15 A. Whoever is responsible for managing that
16 function.

17 Q. Who's responsible for managing that function?

18 A. That would vary based on who's responsible for
19 that particular function that day or --

20 Q. Okay.

21 MR. HOLCOMB: Oh, yeah, I just want to
22 also make sure that we object pursuant to Rules 26, 34,
23 and 30 that Randy Holdridge has not been -- we've never
24 heard of them before. We want them produced as a
25 deponent as well.

1 Q. All right. So who produced the number to be
2 dialed for Mr. Sailola's campaign?

3 A. Oh, I don't know.

4 Q. Can you find that out?

5 A. I do not know how I would do that.

6 Q. Okay. How do they produce the numbers to be
7 dialed in a campaign?

8 A. Well, of course, the phone system is completely
9 separate and distinct from the collection system, so
10 those two things are not integrated, but the -- a list
11 can be prepared through querying information from the
12 collection system. The person organizes it and then,
13 you know, commands the person that launches the
14 telephone call.

15 Q. How many IT people put the numbers into the
16 dialer?

17 A. I do not know how many.

18 Q. Do they have a user ID?

19 A. Well, everybody who has -- well, sure. I mean,
20 a user ID of some sort.

21 Q. Does the -- do the collectors select which
22 number to be dialed?

23 A. They may.

24 Q. Did they in any of these calls that were made
25 to Mr. Sailola?

1 A. I do not know.

2 Q. Okay. When it says "dialer" and no collector
3 is connected to a call, did a collector decide to call
4 Mr. Sailola's number?

5 A. To the extent that the person who created it --
6 these calling lists is considered a collector,
7 potentially, yes.

8 Q. Okay. So when they create these calling lists,
9 they basically create what's called a campaign, pursuant
10 to your manuals. Correct?

11 A. That's correct.

12 Q. All right. How often do they do that?

13 A. That's done on a daily basis.

14 Q. And then the dialer decides when to call
15 certain numbers from that campaign list. Is that true?

16 A. No. That's not true.

17 Q. All right. What -- tell me how that works.

18 A. To my understanding, the list is prepared and
19 there's -- there's no particular -- how do I phrase
20 this? Of course, I'm not an IT professional or an
21 expert. But the list is prepared and the list is going
22 to be called in the order that it was prepared.

23 Q. What must a caller do to have the number
24 dialed?

25 A. I'm sorry?

1 A. Well, keep in mind that that term "dialer" is
2 used for other functions, too, like mailing letters and
3 so on, which is not anything to do with making phone
4 calls. So, yeah, I don't know what -- how to answer
5 that question the way it's phrased.

6 Q. Did a human punch in ten numbers when it says
7 "dialer" on that list?

8 A. No.

9 Q. All right. Must a human instruct the dialer to
10 call a certain number?

11 A. Yes.

12 Q. When?

13 A. When the campaign is created.

14 Q. Okay. But after the campaign is created, they
15 don't -- a human doesn't have to instruct the dialer
16 before the number is called. Is that true?

17 MR. RIGBY: Objection. Misstates prior
18 testimony.

19 A. That's -- the way that's phrased is not true.
20 When a call is placed, the collector instructs the
21 telephone software to call the next number.

22 Q. To call the next number?

23 A. Uh-huh.

24 Q. Does it -- does the collector select which
25 number will be the next number?

1 A. To the extent that the command they hit in
2 their computer system performs that function, yes.

3 Q. All right. So does it get to -- does a
4 collector see a list of numbers and select which one to
5 call or do they just select "next" and the dialer calls
6 the next number?

7 A. They may. If they're looking at different
8 accounts, they may type in the ten digits and call the
9 number.

10 Q. Did they do that in Mr. Sailola's case?

11 A. I don't know.

12 Q. All right. But it has the capacity to just
13 call the next number?

14 MR. RIGBY: Objection. Calls for a legal
15 conclusion.

16 A. The -- well, certainly. As soon as -- as soon
17 as we tell it to call the next number, it calls the next
18 number.

19 Q. It predicts the best times to call each number?

20 MR. RIGBY: Objection. Misstates prior
21 testimony.

22 A. I don't believe it predicts the best time to
23 call anybody, no.

24 Q. It chooses the speed at which to place the
25 calls?

1 A. It has algorithms to determine, yeah, how
2 quickly to place a -- to place a phone call, yes.

3 Q. Well, doesn't it also -- when you said it
4 doesn't predict the best times to call, doesn't it
5 select which time zone should be called at certain
6 times?

7 A. It does not select which time zones. It
8 prohibits time zones that are excluded. That's a
9 safeguard that we have in place to protect consumers.

10 Q. Okay.

11 A. But we run -- we can -- we may run multiple
12 campaigns in a day to help determine which order we want
13 to call accounts and whether we want to call the east
14 coast or central time or whatever.

15 Q. All right. Is there a manual for your dialer?

16 A. Yes. We produced it to you.

17 Q. Okay. So that 850-page document is the manual
18 for your dialer?

19 A. At least a portion of it is. It may also be --
20 it may cover other systems relative to the i3 telephone
21 software.

22 Q. Okay. Are the -- well, excuse me. Does the
23 manual that you provided to us accurately describe your
24 dialer and its functions?

25 A. To the extent that we use certain features, you

1 know, that manual is probably -- it may include
2 functions or features or software packages that we don't
3 use or never purchased.

4 Q. Okay. Do you have two separate dialing
5 systems?

6 A. No. Everything is i3.

7 Q. Did an outside company make any of these calls?

8 A. No.

9 Q. All right. Are you currently using the
10 Platinum or Titanium version of the CR Software?

11 A. We -- well, in our -- in the courts -- for MSB
12 court debt, we use CRS Titanium.

13 Q. Okay. How -- how are Platinum and Titanium
14 different?

15 A. They're just -- they're different -- I'm not an
16 IT expert, so it's -- you know, please forgive me there,
17 but they're different types of systems. Titanium is a
18 newer version; Platinum is an older version. Yeah.

19 Q. When did MSB change to those versions?

20 A. I believe we upgraded in 2010 or '11. 2011,
21 maybe. Yeah.

22 Q. Okay. Was the i3 interactive dialer used for
23 the Platinum -- with the Platinum version?

24 A. That predates my time at the company, so I do
25 not know.

1 Q. The e-mail that you referred to in Exhibit
2 12 -- I mean, Paragraph 12. Correct?

3 A. Yes.

4 Q. All right.

5 MR. HOLCOMB: I would like this to be
6 admitted as Exhibit 15 at this time.

7 Q. All right. Now, I want to show you the e-mail
8 that was filed as Docket No. 5910 in this case.

9 A. Uh-huh.

10 MR. HOLCOMB: And I would like that marked
11 as Exhibit 16, please.

12 Q. Okay. Is this the e-mail that you referred to
13 as Exhibit "1" in your declaration we just read, sir?

14 A. Yes, it is.

15 Q. Okay. And who is Javier Garcia?

16 A. He's one of our IT personnel.

17 Q. Okay. Now, what date -- well, who is Michael
18 Toppeta?

19 A. He appears to be an employee of AVDS.

20 Q. Okay. The e-mail to Javier from Michael
21 Toppeta is what you were referring to as Exhibit "1" in
22 your declaration. True?

23 A. Yes. Uh-huh.

24 Q. What is the date of that e-mail, sir?

25 A. October 28th, 2013.

1 Q. Okay. And in there -- in that e-mail,
2 Mr. Toppeta says that store -- Javier, store or produce
3 telephone numbers to be called, using a random or
4 sequential number generator dialer can store numbers you
5 load to be dialed, but cannot produce numbers to be
6 dialed, randomly or sequentially. Is that true?

7 A. Correct.

8 Q. And it dials -- the dialer then dials out from
9 the lists that are loaded for it to dial. Is that true?

10 A. It is.

11 Q. That accurately describes how this dialer
12 works?

13 A. I believe so.

14 Q. Okay. Now, I'm wondering why in your
15 declaration that you said that MSB relied on this
16 e-mail, in part, to make the decision to purchase the
17 system when you had also testified that it was purchased
18 before you even were employed there in 2011.

19 A. Sure. Well, I don't think my statement says
20 anything about purchasing the dialer. What it says is
21 "in reaching a decision to use the Interactive
22 Intelligence system." And so what happens was, we
23 decided on -- on or around Monday, October 28th, 2013,
24 to obtain an opinion from AVDS, and based on that, that,
25 in part, helped us decide to continue using the

1 MR. RIGBY: He's going to hand you a
2 document. Wait for the sticker to be put on it.

3 THE WITNESS: Well, if he's handing me
4 something, I'm going to --

5 MR. HOLCOMB: I'm sorry. I'll hand it to
6 the court reporter first.

7 MR. RIGBY: There's a process here.

8 THE WITNESS: Well, I -- if the lawyers
9 delete it, then I'm --

10 Q. Okay. Now, what I have handed you says
11 Chapter 2, Dialer and Database Architecture. Is that
12 true?

13 A. Yes.

14 Q. It's Bates-stamped MSB000182?

15 A. Yes.

16 Q. Is this part of the manual that you referred to
17 earlier dealing with your -- the i3 dialer?

18 A. It appears to be, but if I could see the index
19 I could confirm it.

20 Q. Okay. Do you have any reason to doubt the
21 authenticity of this document?

22 A. No particular reason.

23 Q. All right.

24 MR. HOLCOMB: Mr. Rigby, are you going to
25 stipulate to the authenticity of this document in light

1 of the fact that we were produced 850 pages of this
2 document a day ago and had to --

3 MR. RIGBY: Sure. It's got our Bates
4 number on there.

5 MR. HOLCOMB: Okay. All right.

6 Q. Now, I want to turn your attention to Bates
7 stamp Page 185.

8 A. Okay.

9 Q. All right. The first sentence there says,
10 Interaction Dialer is a set of client/server extensions
11 that add predictive dialing and campaign management
12 capabilities to the Consumer Interaction Center
13 platform. Is that a true statement?

14 A. It's the statement that exists here.

15 Q. Is that a true statement?

16 A. Again, this isn't my -- my software. I -- I
17 have to assume it's true, but, again, it's not -- you
18 know, I didn't write the code of the software.

19 Q. Are you not using the Interaction Dialer?

20 A. We are. Yes.

21 Q. Okay. So when it says Interaction Dialer™,
22 it's referring to your -- MSB's dialer that it's using
23 currently. Correct?

24 A. Well, especially since it's a trademark, it's
25 actually referring to Interactive Intelligence's dialer,

1 but we -- MSB uses Interactive Intelligence Interaction
2 Dialer.

3 Q. Okay. But the name of the product that you use
4 is Interaction Dialer?

5 A. Yes. That's correct.

6 Q. Okay. All right. And you rely on the
7 manufacturer when it tells you that that particular
8 product adds predictive dialing and campaign management
9 capabilities to the system?

10 A. Yes.

11 Q. All right. Will you please turn to Bates stamp
12 Page 186. And do you see the first bullet point there?

13 A. I do see it.

14 Q. And the first sentence of that says, The
15 outbound dialer server uses its predictive algorithm to
16 provide intelligent outbound predictions.

17 A. Uh-huh.

18 Q. Is that true?

19 A. Yes. I had previously mentioned that.

20 Q. Okay. Please turn to Bates stamp Page 189.

21 A. I'm there.

22 Q. Okay. Do you see the -- under Interaction
23 Administrator, the second paragraph, it says,
24 Interaction Dialer adds the capability to manage and
25 configure zones, stages, rules, schedules, campaigns,

1 and workflows.

2 A. Uh-huh.

3 Q. Is that true?

4 A. It is true for the Interaction Administrator,
5 which is not the Interaction Dialer.

6 Q. Well, doesn't it say the Interaction Dialer
7 adds the capability to manage and configure?

8 A. Yeah, to understand the context, I would need
9 to read a little bit of the -- this part of the chapter.

10 Q. Is that what this book -- I mean, this manual
11 that you've produced here says?

12 A. It does. But as you -- as you'll notice, it's
13 also under a bold header that says Interaction
14 Administrator.

15 Q. Okay. Is your testimony that the Interaction
16 Dialer does not have the capacity to add capability to
17 manage and configure zones, stage -- stages, rules,
18 schedules, campaigns, and workflows?

19 A. My testimony is that I would need to learn more
20 about the dependencies that enable that capability.

21 Q. Okay. Page 190.

22 A. Yes.

23 Q. All right. Do you see where it says Automated
24 Dialing as the subheading?

25 A. I do.

1 Q. And it says that the Interaction Dialer
2 retrieves telephone numbers from a call queue?

3 A. Yes.

4 Q. Is that true?

5 A. Yes, the queue that we create.

6 Q. All right. And then down below that it says
7 Predictive Dialing. Do you see that?

8 A. I do see that.

9 Q. It says, Predictive dialing refers to the
10 process of placing outbound calls, based upon the
11 prediction that an agent will be available at some time
12 in the future once a connection with a person is
13 achieved. Is that true?

14 A. Yes. Those are the algorithms I was speaking
15 to earlier.

16 Q. Okay. And you admit that the Interaction
17 Dialer has the capacity to do that?

18 A. The capacity to do what?

19 MR. RIGBY: Objection. Misstates prior
20 testimony.

21 Q. To process the placing of outbound calls based
22 upon a prediction that an agent will be available at
23 some time in the future once a connection with a person
24 is achieved.

25 A. I would -- I would say that it has that

1 capability, but not in the capacity of an ATDS system.

2 Q. Okay. But you admit that it has that
3 capability --

4 A. To the --

5 Q. -- the system that you're using?

6 A. Only to the extent that it is not part of an
7 ATDS system.

8 Q. All right. So what -- what does that mean
9 exactly?

10 A. What we talked about earlier, the TCPA defines
11 what an ATDS is. To do the -- to do the law justice, I
12 would need to read it to -- to quote it specifically,
13 but it has to do with the generation of -- the
14 generation of random or sequential numbers to be dialed,
15 and as we noted on Exhibit 16, it does not have that
16 capacity.

17 Q. All right. Are you testifying that your
18 Interaction Dialer does not have the ability to perform
19 predictive dialing as defined here in this manual?

20 MR. RIGBY: Objection to the extent it
21 calls for a legal conclusion and it's opinion testimony.

22 A. So it -- I believe that it is able to do
23 predictive dialing to the extent that it says in the
24 manual, but limited by the statement made by AVDS in the
25 e-mail we just referenced.

1 Q. Okay. So it -- I see. So it can store the
2 numbers and then dial from the stored numbers. That's
3 the capability it has?

4 A. It can do, as you pointed out -- and I'd refer
5 you to the manual. It can do what the manual states, to
6 the extent that it does not do what AVDS has indicated
7 that it can't do.

8 Q. Okay. So it cannot generate random numbers or
9 produce random numbers, but it can predict when to call
10 the numbers that are stored by your IT people?

11 MR. RIGBY: Objection. Multifarious.

12 A. We're getting into highly technical
13 information. I'm not an IT professional, but I will say
14 that to the extent it describes it in this manual and
15 that is limited by this e-mail, yes.

16 Q. It has the capability to do that?

17 A. To the --

18 MR. RIGBY: Objection. Asked and
19 answered. Same -- same objections.

20 Q. Now, why did MSB make the decision to use such
21 a dialer?

22 A. Well, like I said, the decision to purchase the
23 dialer was done -- was made prior to my arrival. I
24 don't know.

25 Q. Why do you make the decision --

1 A. I'm sure the statement -- well, they're making
2 an opinion statement there, I believe. It's saying it's
3 generally accepted. I'm not sure who --

4 Q. Okay.

5 A. -- who all is opining.

6 Q. All right. Using a predictive dialer, agents
7 are connected to targeted parties for as much as 55
8 minutes per hour. Do you see that, the next bold
9 sentence down?

10 A. Yes.

11 Q. Okay. If your agents are speaking with debtors
12 more frequently, does that mean that they are able to
13 collect more money?

14 A. Potentially, yes.

15 Q. So MSB would make more money by use of this
16 dialer or a similar dialer. Correct?

17 MR. RIGBY: Objection. Calls for
18 speculation; legal conclusion.

19 A. Like any business, driving efficiencies will
20 help improve revenue or profitability.

21 Q. Okay. And then will you please turn to Page
22 191?

23 A. Uh-huh.

24 Q. It says, Automatic dialing and predictive
25 calculations work together to improve the efficiency of

1 outbound call centers. Is that true?

2 A. It seems to me to be an opinion statement by
3 i3. I'm sure it's true to the person who wrote it.

4 Q. Does MSB use automatic dialing and predictive
5 calculations together to improve the efficiency of their
6 outbound call centers?

7 A. I think we would need to dig a little bit
8 deeper into that, but as I stated before, as it relates
9 to automatic dialing or predictive dialing, we don't --
10 we don't have a system that is capable of doing those
11 functions, to the extent that they're limited by the --
12 by the TCPA and by the e-mail provided by Mr. Toppeta at
13 AVDS.

14 Q. Your system cannot produce numbers but it can
15 store them, in other words?

16 A. It can do precisely what's stated in the
17 e-mail.

18 Q. All right. And will you please turn to Page
19 192?

20 A. Sure.

21 Q. In the very top there it says, In predictive
22 dialing mode, outbound calls are placed based on the
23 prediction that an agent will be available once a call
24 is connected to a live person. Do you see that?

25 A. Yes. But I want to read the sentence again

1 here.

2 Q. All right.

3 A. Yes.

4 Q. All right. Does MSB operate its i3 system in
5 predictive dialing mode?

6 A. On -- on certain occasions, yes.

7 Q. Okay. What about when Mr. Sailola was called?

8 A. It's possible. I don't know.

9 Q. Okay. What other modes does it use?

10 A. I don't know the names of all the modes. I
11 mean --

12 Q. Well, down below that, towards the bottom,
13 there's an Agentless Mode. Do you see that?

14 A. Uh-huh.

15 Q. And the Interaction Dialer can conduct -- or
16 conduct campaigns that do not require agent
17 participation.

18 A. Uh-huh.

19 Q. Is that true?

20 A. It can, yes.

21 Q. And do you guys use that feature?

22 A. We do.

23 Q. Okay. Did you use that related to
24 Mr. Sailola's case?

25 A. I'm not sure if we did, but, of course, we had

1 consent to do so if -- if we did.

2 Q. Is this a document that is kept in the
3 normal -- or stored in the normal course of MSB's
4 business?

5 A. What document?

6 Q. This one.

7 A. It's stored as the complete manual, not just
8 this.

9 Q. All right. But this is part of that. Right?

10 MR. HOLCOMB: I think we've already --

11 A. Stipulated that.

12 MR. HOLCOMB: -- moved to admit that, but,
13 yeah, just to make sure. Okay.

14 Mr. Rigby, will you stipulate to the
15 authenticity of this Bates-stamped document as well?

16 MR. RIGBY: Sure.

17 MR. HOLCOMB: All right. I would like to
18 move to have this admitted as Exhibit 18?

19 THE REPORTER: Yes.

20 Q. All right. Now, is this Chapter 5 of the i3
21 manual?

22 A. That is what it says, yes.

23 Q. All right. And I apologize, everyone take
24 notice, they are printed on both sides. It was very
25 voluminous.

1 A. Okay.

2 Q. But I would like you to turn to the Bates stamp
3 Page 297.

4 A. Yes.

5 Q. And do you see there Time Zone Blocking?

6 A. Uh-huh. Yes, I do. I'm sorry.

7 Q. And this -- this creates -- well, this
8 instructs you how to create blocking of certain time
9 zones during certain hours. Correct?

10 A. Yes.

11 Q. All right. And does MSB use that feature?

12 A. MSB does, as I mentioned previously, have
13 controls in our telephone software to effectively
14 achieve the same result; however, I'm not sure if this
15 specific feature is how that is done.

16 Q. Okay. All right. But it does use some sort of
17 software to --

18 A. We achieve the same result.

19 Q. -- achieve that result?

20 A. Yes.

21 Q. Okay. All right. Thank you, Mr. Million.

22 All right. Let's move on very quickly.

23 I'd like to provide you here the next exhibit.

24 MR. HOLCOMB: Okay. Do you stipulate to
25 the authenticity of this, Mr. Rigby?

1 MR. RIGBY: If we produced it, we'll
2 stipulate to it.

3 MR. HOLCOMB: All right. Then we would
4 move to admit this as Exhibit No. 18, please.

5 THE REPORTER: 19.

6 MR. HOLCOMB: 19, please.

7 Q. Okay. Now, is this Chapter 6 of your manual?

8 A. It is.

9 Q. Okay. Now, what are campaigns?

10 A. It's a term used to, I guess, refer to a set of
11 calls you're going to place --

12 Q. Okay.

13 A. -- I guess is a way to say it.

14 Q. And that's what your IT guys set up when they
15 get these data transfers?

16 A. It could be an IT person or it could be a
17 collection manager, supervisor, or something.

18 Q. All right. What does "workflow" mean?

19 A. Well, now -- now we're getting into some of the
20 more technical stuff.

21 Q. Does it --

22 A. I think I'd like to refer to the manual to kind
23 of refresh my memory on --

24 Q. Okay. Well, does it refer to a type of calling
25 campaign?

1 A. I'll need to -- I'd like to refer so that I'm
2 accurate in my response. Do you happen to know what
3 page that's -- it's dealing with here? Or do you have
4 the index? I can refer to the index.

5 Q. No, I do not.

6 A. All right. I'll have to page through until I
7 find it. I don't know if any -- oh, this is going to
8 workflows. All right. Well, there is a page called
9 "What are Workflows?" So I can read that for you, if
10 you'd like.

11 Q. Okay.

12 A. Would you like me to read that page?

13 Q. Well, I would like you to just explain what it
14 is.

15 A. Well, I think the best explanation is going to
16 be right here in the manual.

17 Q. Okay.

18 A. So I'll read that.

19 Q. All right.

20 A. Workflows provide the capability to automate
21 how campaigns run. Workflows address the needs of
22 customers who manage multiple campaigns and multiple
23 clients. These call centers typically start and stop
24 campaigns based upon a variety of criteria. For
25 example, a call center might run a campaign until a

1 quota of successful contacts is made, a sales threshold
2 is reached, until a pool of customers is polled, or
3 until the campaign is run for a specific length of time.
4 Often it is desirable to transition the same pool of
5 agents from campaign to campaign. And then there's a
6 flow chart here, which I would need to study more if you
7 want me to --

8 Q. All right. Well, let me just ask you this,
9 Mr. Million: What is -- is that definition of
10 "workflow," is that related to the term "workgroup"?

11 A. No. As I mentioned, those are two completely
12 separate systems, not integrated.

13 Q. What is a workgroup?

14 A. A workgroup is, think -- you can think of a
15 workgroup like a file folder on a Windows machine.

16 Q. Okay.

17 A. It's where we -- you put accounts in a file
18 folder, in a workgroup.

19 Q. Okay. On Exhibit 10, I noticed the -- on
20 November 4th of 2014 -- or '13, you put a legal hold
21 on --

22 A. Are we -- are we changing exhibits?

23 Q. Yeah. I didn't know that they weren't related.
24 I'm sorry.

25 A. Yeah. We're changing exhibits. Which exhibit?

1 A. What exhibit are we -- okay, so the manual,
2 8-5?

3 MR. RIGBY: Just wait for his question.

4 THE WITNESS: Okay.

5 Q. I said, is it -- is it reckless to ignore those
6 recommendations based on the fact that you're a debt
7 collector rather than a telemarketer?

8 MR. RIGBY: Objection. Calls for a legal
9 conclusion; multifarious; vague and ambiguous.

10 A. Yeah, our lawyer would -- would provide us with
11 guidance on how to comply with the TCPA.

12 Q. All right. I want to show you now the
13 complaint that was filed in this case.

14 A. Okay.

15 Q. All right. Now, I would direct your attention
16 to -- oh. And do you agree that this is the complaint
17 that was filed in this case initially?

18 A. It appears to be.

19 Q. Okay.

20 MR. HOLCOMB: I would ask that that be
21 admitted as the exhibit next in order.

22 Q. And I want to draw your attention to Page 10.
23 The subheading is Collection Calls to Mr. Sailola's
24 Cellular Telephone.

25 A. Uh-huh.

1 Q. And from Paragraphs 51 to Paragraph 72, those
2 list specific phone calls and allege that it was made
3 via MSB's automatic telephone dialing system. Would you
4 agree with that?

5 A. That is what it says.

6 Q. Okay.

7 A. I believe there was an amended complaint filed
8 or an amended answer.

9 Q. Now, I want to show you the next document. It
10 was filed in this case as Docket No. 10.

11 A. Uh-huh.

12 Q. And it was MSB's original answer in this case.

13 A. Uh-huh.

14 Q. All right.

15 A. Can you do me a favor and please wait for her
16 to hand me the exhibits?

17 Q. Oh, I'm sorry. I'm sorry. All right. So do
18 you agree that this was the original answer that was
19 filed in this case?

20 A. The original answer, yes.

21 Q. All right.

22 MR. HOLCOMB: I would like to have that
23 admitted as the next exhibit in order.

24 Q. All right. I would draw your attention to
25 Paragraph 8 through Paragraph 29 of that document, and

1 it starts on Page 3.

2 A. Oh. Yes.

3 Q. Okay. Do you see that?

4 A. I do.

5 Q. And for each of those allegations of
6 Paragraphs 51 through 72 in the complaint, it states,
7 Defendant admits that on the appropriate date,
8 Defendant, via its automatic telephone dialing system,
9 made a telephone call and left a voice message on
10 Mr. Sailola's cellular telephone.

11 A. Uh-huh.

12 Q. Do you see that?

13 A. I do.

14 Q. Is that true?

15 A. Well, actually, no, at least in the first
16 paragraph. We didn't make any calls on July 2nd. And
17 I'm not sure if automatic telephone dialing system is --
18 here is being used in the -- in the same context as the
19 TCPA.

20 Q. All right. So when did -- when did that
21 change?

22 A. When did what change?

23 Q. I'm interested in the automatic telephone
24 dialing system for each of these paragraphs that you've
25 admitted.

1 That's why we -- we have them.

2 Q. Why would your attorney admit that?

3 MR. RIGBY: Objection. Misstates prior
4 testimony.

5 A. I can't speak for my attorney. He's -- they're
6 highly educated legal professionals. I can't answer
7 that question.

8 Q. Why is that attorney no longer on your case?

9 MR. RIGBY: Don't answer that. It's legal
10 strategy.

11 MR. HOLCOMB: Are you asserting a
12 privilege?

13 MR. RIGBY: I am. Attorney-client
14 privilege. Thank you.

15 Q. All right. Let me give it to the court
16 reporter. I'm sorry, Mr. Million. All right. I'm
17 showing you a document now that was filed as Docket 77
18 on November 12th of 2014. Do you see that?

19 A. I do.

20 Q. All right. Are you aware of this filing?

21 A. Yes.

22 Q. All right.

23 MR. HOLCOMB: We would ask that this be
24 admitted as the exhibit next in order.

25 Q. I want to draw your attention to Page 1 of this

1 exhibit.

2 A. There's two Page 1's. The cover page or the --

3 Q. Well, the one that's numbered Page 1.

4 A. They're both numbered Page 1. Page 1 and
5 Page 1.

6 Q. Oh, okay. Page 1 on the bottom.

7 A. Okay.

8 Q. All right. And under subcategory -- or
9 Subheading A.

10 A. Yes.

11 Q. And it says, First, companies that engage in
12 debt collecting activities, like MSB, simply do not know
13 whether certain technology, which MSB utilizes, is or is
14 not a violation of the TCPA. Do you see that?

15 A. I do.

16 Q. Is that your position, your legal position?

17 A. I -- I have to defer to our attorney. They
18 drafted this pleading.

19 Q. Okay. So you do not know whether the use of
20 this auto dialer is or is not a violation of the TCPA?

21 MR. RIGBY: Objection. Misstates prior
22 testimony; calls for a legal conclusion.

23 A. Based on -- based on information that is
24 available to me, all of these things we've been talking
25 about this evening, all of the evidence points to the

1 deposition.

2 Q. Are you -- did you use the same prerecorded
3 voice system in Ranwick as you do -- as you did when you
4 called Mr. Sailola?

5 MR. RIGBY: Objection. Misstates prior
6 testimony.

7 A. I don't know. I would need to review all the
8 facts of Ranwick again.

9 Q. Are you disputing that calls were made to
10 Mr. Sailola using a prerecorded voice?

11 A. To Mr. Sailola?

12 Q. Uh-huh.

13 A. No, I'm not disputing that.

14 Q. Okay. Is that a --

15 A. We had consent to do so.

16 Q. Okay. Did MSB leave voice mails for
17 Mr. Sailola?

18 A. We did.

19 Q. Were they automated?

20 A. Not all of our collectors -- you have the
21 recordings -- left messages.

22 Q. But some of them were?

23 A. Yes.

24 Q. How many of the automated messages were left
25 for Mr. Sailola? You can refer to Exhibit 10.

1 A. I've just got to find it here. One second.
2 I'm sorry. Things are getting a bit disorganized over
3 here.

4 Q. Yeah.

5 A. I don't know where it is. Okay. And your
6 question again? I'm sorry.

7 Q. On how many of these calls were automated
8 messages left for Mr. Sailola?

9 MR. RIGBY: Objection to the extent it
10 calls for a legal conclusion.

11 A. I'm just going to double-check my -- oh. One
12 second. I've just got to double-check things. 35, all
13 with consent.

14 Q. 35 --

15 A. Recorded messages, all with consent.

16 Q. Prerecorded messages?

17 A. Yes.

18 Q. Are they artificial prerecorded messages?

19 MR. RIGBY: Objection. Calls for a legal
20 conclusion; misstates prior testimony.

21 A. They are not.

22 Q. All right. Who is the person that -- that
23 recorded those?

24 A. I don't know in this case. We -- we use a
25 voice talent, so she may have recorded them. I don't

1 know.

2 Q. Okay. All right. But they are prerecorded.
3 Correct?

4 A. Prerecorded human voices.

5 Q. All right. And on -- did that message allow
6 debtors the opportunity to stop calls without having to
7 speak?

8 MR. RIGBY: I'm sorry. Could you ask that
9 again?

10 Q. Did that message allow debtors the opportunity
11 to stop the calls without having to speak with someone
12 at MSB?

13 MR. RIGBY: Objection. Misstates prior
14 testimony.

15 Q. I'm asking if it did.

16 A. You're asking --

17 MR. RIGBY: You're asking about a debtor
18 and you're referring him to Deposition Exhibit 10. I
19 just want to make sure we're clear on what you're asking
20 him about.

21 Q. Did the prerecorded message or does the
22 prerecorded message that was used in Mr. Sailola's case
23 allow debtors the opportunity to stop calls without
24 having to speak with someone at MSB? In other words, is
25 there an opt-out?

1 A. There is -- just as the TCPA would indicate,
2 there is instructions on the message to call back and
3 request that the calls discontinue.

4 Q. Okay. So the debtor would have to call back
5 and speak with someone at MSB?

6 A. Yes.

7 Q. Okay.

8 A. Or, I mean, I suppose they could write a letter
9 or something. Yeah.

10 Q. All right. Do you use software to create these
11 messages?

12 MR. RIGBY: Objection. Vague and
13 ambiguous.

14 A. I don't know how they're created. I mean, as I
15 said, there's a -- there is a voice talent, a person,
16 who records them.

17 Q. Did software create the messages left for Reed
18 Sailola?

19 A. I think that's the answer -- I think that's the
20 question I just answered. A human recorded the message.

21 Q. Okay. And then your software causes that
22 message to be left for Mr. Sailola?

23 A. The telephone software delivers the message.
24 Yes.

25 Q. Okay.

1 MR. HOLCOMB: I'm asking about Paragraph
2 13 where he refers to this transcript.

3 A. I don't believe I refer to a transcript.

4 Q. Paragraph 12.

5 MR. RIGBY: Paragraph 12.

6 Q. Attached hereto as Exhibit "A" is a true and
7 accurate transcription of the call --

8 A. Oh. Yes.

9 Q. -- that occurred on July 8, 2013. Correct?

10 A. That's correct.

11 Q. All right. And my question is, is this
12 Document 30-2 that says Exhibit "A" at the bottom, is
13 that what you were referring to?

14 A. Yes.

15 Q. All right.

16 MR. HOLCOMB: I would move to have this
17 entered as the next exhibit.

18 Q. Now, when Mr. Sailola called, he said someone
19 from MSB had been trying to call him. Is that true?

20 A. Let me review the -- yes. He stated, "I don't
21 know. Somebody was trying to call me."

22 Q. Okay. And this was a call with Mr. Dorn.
23 Correct?

24 A. That's correct.

25 Q. All right. And he says, "OK, your fine on that

1 DUI, sir, is \$620.61. Will you be taking care of that
2 by credit card or debit card today?" Is that true?

3 A. Oh, down --

4 Q. That's at the very bottom.

5 A. Down the page. Yes. Yes. That's correct.

6 Q. And he said, "What was this DUI? I thought I
7 had my attorney Jon Burge."

8 A. Uh-huh. Yes.

9 Q. See that? Okay. And Mr. Dorn says, This is a
10 DUI impairment Breathalyzer. It was your first offense,
11 occurred on August 7th. And you're still located at the
12 redacted address. Is that true?

13 A. Is -- you're asking me if that statement is
14 true?

15 Q. Uh-huh.

16 A. Yes, that's what it says.

17 Q. Is Mr. Dorn a collector for MSB?

18 A. He is. Yes.

19 Q. Did Mr. Dorn ask Mr. Sailola for his attorney's
20 contact information?

21 A. Let me see here. No.

22 Q. Okay. Did MSB notify the Hawaii State
23 Judiciary about the statements Mr. Sailola had made?

24 A. To the extent that they are documented in the
25 account notes and the -- and the judiciary has access to

1 Q. Well, I mean, the conversation recorded in this
2 document.

3 MR. RIGBY: Same objection.

4 A. It would, but it's -- in this particular case,
5 we had consent from the judiciary.

6 Q. Okay. Is "OK, and the number we called you on
7 sir, is that a good number to reach you?" and the
8 answer, "Yes," is that sufficient to give prior express
9 consent under the TCPA?

10 A. Yes.

11 MR. RIGBY: Objection. Calls for a legal
12 conclusion.

13 A. Yes, it is.

14 Q. Where did you learn that that was sufficient
15 consent?

16 A. Our -- our policies and procedures are on
17 advice of legal counsel.

18 Q. All right. MSB's policies and procedures are
19 where you learned to -- that that was consent?

20 MR. RIGBY: Objection. Calls for a legal
21 conclusion.

22 A. From the TCPA and our lawyer's guidance.

23 Q. All right. Why did MSB let its license with
24 the State of Hawaii, Department of Commerce & Consumer
25 Affairs, expire on June 4th of 2014?